

REMARKS

This Amendment is in response to the Office Action dated September 21, 2006. All objections and rejections are respectfully traversed.

Claims 2-26 are in the case.

No claims are currently amended.

Claims 21 – 30 are currently added.

Request for Interview

The Applicant respectfully requests a telephonic interview with the Examiner and a Supervisory Examiner after the Examiner has had an opportunity to consider this Amendment, but before the issuance of the next Office Action. The Applicant may be reached at 617-951-3074.

Rejections under 35 U.S.C. §§ 102 and 103

Claims 2-20 are rejected under 35 U.S.C. §§ 102 and 103 for the reasons which the Examiner repeated from the previous Office Action dated June 1, 2006. Applicant respectfully maintains and reasserts his arguments filed in the Amendment and Response Under 37 C.F.R. §1.111 dated June 28, 2006.

In response to Applicant's argument that Tecchio does not teach or suggest a release mechanism that actuates upon exertion of a sheer force in a constrained direction, the Examiner indicated that:

“Tecchio continually senses all of the sheer forces being applied... [t]his meets the limitations of the claims because it does not limit the sheers [sic] forces to any one direction but includes sheer forces acting in any one specific direction.”

Applicant respectfully submits that persons having ordinary skill in the art should appreciate that by sheer force in a “constrained” direction, it is implied,

especially in the context of the present specification, figures and surrounding claim elements, that the lower sole element will release upon exertion of a force in that direction but not in response to sheer forces in a different direction. To more clearly claim this element, new claim 30 is added to recite “such that a predetermined release force in the longitudinal direction will cause the upper sole element to release from the lower sole element, and a force in the lateral direction will not cause the upper sole element to release from the lower sole element.”

In response to Applicant’s argument that Oullette does not teach or suggest translation longitudinally or laterally, the Examiner erroneously asserted that Applicant admits translation of motion. Applicant makes no such admission relative to the elements as claimed. Persons having ordinary skill in the art would appreciate as Applicant recited that “although a small amount of relative motion between T-Pins and apertures 32 is allowed by slots 34” such motion is prevented at least by engagement of heel pin 24 in aperture 22. To more clearly claim the invention, new claims 27 - 29 are added to recite “a predetermined release force resulting from wearing the shoe during sports related activities” and from “a user’s deceleration while a user is wearing the shoe” and from “engagement of the lower sole element with a ground surface in response to a user’s wearing the shoe.”

In response to Applicants argument that the sole of Ouellette has nothing to do with releasable soles when a predetermined force is applied, the Examiner indicated that “any sole would release at a predetermined force (i.e. the force at which the sole fails)...” Applicant respectfully submits that contrary to the Examiner’s assertion, persons having ordinary skill in the art would recognize that the force at which the sole fails is not “predetermined” as particularly claimed.

In response to Applicant’s argument that the Examiner mischaracterizes “shear pins,” the Examiner indicated that without reciting a predetermined number at which the pins would shear, Applicant is arguing more than what is claimed because “the pins

noted by the Examiner would need to fail, i.e. shear, and would therefore be considered “shear pins” when they do fail. Applicant respectfully submits that persons having ordinary skill in the art would appreciate that, contrary to the Examiner’s characterization, the term “shear pin” as particularly claimed has a well known and unambiguous definition. For example, McGraw Hill Professional Science and Technology Dictionary recites:

“Shear Pin: A pin or wire provided in a fuse design to hold parts in a fixed relationship until forces are exerted on one or more of the parts which cause shearing of the pin or wire; the shearing is usually accomplished by setback or set forward (impact) forces; the shear member may be augmented during transportation by an additional safety device. In a propellant-actuated device, a locking member which is released by shearing. In a power train, such as a winch, any pin, as through a gear and shaft, which is designed to fail at a predetermined force in order to protect a mechanism.”

Similarly, the on-line dictionary, Wikipedia, recites:

“**shear pin** is the mechanical analogue of an electric fuse. Installed in a drive train, it is designed to break in the case of a mechanical overload, preventing other, more-expensive parts of the drive train from being damaged.”

In the present case the “drive train” corresponds to the human leg, and the portion being protected is the human knee. Applicant respectfully submits that none of the cited references teach or suggest the use of a shear pin as particularly claimed.

In response to Applicants’s argument that Starks does not teach break away portions, the Examiner indicated that “all things break or have a failing point.” Applicant respectfully submits that persons having ordinary skill in the art will appreciate that the claimed “breakaway portions which prevent longitudinal translation... unless a force exceeding a predetermined shear force is exerted” particularly describe portions that are designed to yield in response to a particular force and, contrary to the Examiner’s characterization, are not taught or suggested by any reference that merely recites all structure simply because all things can break at some force level (i.e. a force that is not predetermined as claimed).

In response to Applicant's argument that Techio does not disclose a ligament portion, the Examiner indicated that the spring of Techio performs the claimed function until the spring fails. Applicant respectfully submits that, contrary to the Examiner's characterization, the spring of Techio will not yield at a predetermined force because the force at which it breaks is not predetermined.

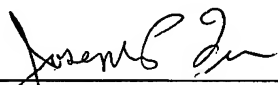
All independent claims are believed to be in condition for allowance.

All dependent claims are believed to be dependent from allowable independent claims, and accordingly in condition for allowance.

Reconsideration is respectfully requested.

Please charge any additional fee occasioned by this paper to our Deposit Account No. 03-1237.

Respectfully submitted,



Joseph P. Quinn
Reg. No. 45,029
CESARI AND MCKENNA, LLP
88 Black Falcon Avenue
Boston, MA 02210-2414
(617) 951-2500